Les Gay

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
EASTERN AREA OFFICE
1951 Constitution Avenue NW.
Washington, D.C. 20245

IN REPLY REFER TO:
Eastern Area

SEP 26 1975

Memorandum

To: Commissioner of Indian Affairs

From: Area Director, Eastern Area Office

Subject: Hatteras Tuscarora Indian of North Carolina

On August 27, 28, and 29, 1975 the following members of a task force met with the so-called "Hatteras Tuscarora Indians of North Carolina":

Harry Rainbolt, Eastern Area Director
Ray Butler, Chief, Division of Social Services
Les Gay, Tribal Operations Staff
John Gordon, Trust Services Staff
Joe Gauthier, Eastern Area Staff
Tom Burden, Eastern Area Staff

After enactment of the Indian Reorganization Act (IRA), 48 Stat. 984, which contains a provision defining Indians, not members of a recognized tribe, to include all persons of one-half or more Indian blood, there was some uncertainity of the blood quantum of these Indians and the applicability to them of the IRA, as amended. The Bureau of Indian Affairs authorized an anthropologist, one Carl Seltzer, to determine whether or not there were persons of one-half or more Indian blood among the alleged Indian people of Robeson and adjoining counties. Based upon physical examinations of 209 applicants, Seltzer concluded that 22 persons did, infact, have at least one-half degree or more Indian blood. Consequently, the Assistant Commissioner of Indian Affairs, William Zimmerman, sent a letter to each of the 22 successful applicants, dated December 12, 1938, stating that he was "entitled to benefits established by the Indian Reorganization Act" but that no other benefits were being established nor was tribal status being conferred. (Thus, the IRA benefits involved were tuition loans, loans for economic development, and Indian preference in Bureau of Indian Affairs employment, and the right to petition the Secretary to take land and enable them to organize as a group). No IRA benefits were ever secured for these 22 persons. Thus, the situation until 1956 was as follows:

(1) no organized group composed of Indian persons from Eastern North Carolina had ever been Federally recognized; (2) 22 persons from the area had been designated as possessing half or more Indian blood and therefore eligible for benefits under the IRA as individuals but had not received any such benefits; (3) the passage of the Lumbee Act in 1956 was regarded by the Department as terminating its obligation to the 22 individuals.

The recent Maynor v. Morton case held that the 1956 Lumbee Act (70 Stat. 254) did not take away any individuals rights and where plaintiff in 1938 was certified by the Department of the Interior as an Indian within the meaning of the Indian Reorganization Act he remained eligible for benefits of said Act notwithstanding subsequent passage of the Lumbee Act. The purpose of our meeting was to discuss the benefits they might expect to receive as a result of the case.

The group we met with had scheduled the meeting to take place in an abandoned restaurant in an isolated location near Maxton, North Carolina. The meeting room was small, without adequate ventilation and did not have adequate tables and chairs to accomodate the number of people. By mutual agreement arrangements were then made by me to rent a conference room at a motel in Lumberton, North Carolina.

The meetings were attended by 25-35 people at various times, one of whom wore a pistol on his hip at all times. Also in attendance were the following three (3) attorneys representing various factions within the group:

Thomas Tureen
Raymond Gibbs
Barry Storick

At the start of the meeting we advised the group that while we probably would not be able to answer all their questions, we were prepared to advise them on the services available to the 8 survivors of the 22 individuals and their descendants who were one-half or more degree Indian blood.

A flip chart was used to bring out the following points:

Maynor v. Morton

I. <u>Court Decision and What It Says</u>.

A. The Court of Appeals, Wilkey, Circuit Judge, held that the Lumbee Act did not take away any rights conferred on any individuals by any previous

litigation and that where plaintiff in 1938 was certified by the Department of the Interior as an Indian within the meaning of the Indian Reorganization Act, he remained eligible for benefits of said Act.

B. Where plaintiff in 1938 was certified by the Department of the Interior as an Indian within the meaning of the Indian Reorganization Act even though he did not live on a reservation and was not a member of a recognized tribe, he remained eligible for benefits of said Act notwithstanding subsequent passage of the Lumbee Act.

C. Among the benefits was the right to petition the Secretary to establish a reservation for such individuals, which if granted, would afford them access to a wide range of federal Indian services (as members of a reservation based federally recognized Indian group.)

(This and other benefits available under the IRA to non-tribal Indians were first detailed in a memorandum dated 8 April 1935 to the Commissioner of Indian Affairs from then Assistant Solicitor Felix S. Cohen who later authored the treatise FEDERAL INDIAN LAW (1942).)

D. Maynor and the other 21 were informed by the Department that they were "entitled to benefits established by the Indian Reorganization Act. Please note that no other benefits were involved. These people do not obtain tribal status or any rights or privileges in any Indian Tribe."

II. <u>Benefits Under BIA - Our Explanation Thereof</u>

A. Recognition as Individual Indians.

B. These Indians, therefore can participate in the benefits of the Wheeler-Howard Act only in so far as individual Indians may be of one-half or more Indian blood (Cohen 1935).

C. Can participate in IRA benefits under Section 11- Educational.

D. Can participate in IRA benefits under Section 12 - Indian Preference in BIA employment.

E. "The right to petition the Secretary to acquire land and establish a reservation for such individuals, which, if granted, would afford them access to a wide range of federal Indian Services (as members of a recognized Indian group on a reservation).

F. May organize under Section 16 and 17 of the Wheeler-Howard Act, if the Secretary of the Interior sees fit to establish for these eligible Indians a reservation. Such a reservation might be established either by outright purchases of land by the Secretary of the Interior under Section 5 of the Wheeler-Howard Act or by relinquishment to the United States of land purchased by or donated to the Indians themselves.

G. There are other current BIA programs not in existence in 1935 that these individuals may now be eligible for.

Each of the following programs, and the benefits available to individual Indians, was described.

1. Housing Improvement Program.
2. Employment Assistance Program.
3. Social Services Program.
4. Indian Business Development Program.
5. Loan Guarantee Program.
6. Adult Education.
7. Higher Educational Grants.

III. Limitations on Benefits

A. Nothing retroactive prior to Maynor v. Morton.

B. No funds have ever been allocated for or to the original 22.

C. No recognition of an Eastern North Carolina tribe of Indians under Federal jurisdiction.

D. No trust land under authority of the Secretary of the Interior.

E. No other IRA or BIA benefits except those under Item II.

IV. Other questions that need resolution

A. Descendants

Quote from letter to Vestia Locklear (January 28, 1939)

"Further more, this enrollment would not apply to any children you may have, unless they were born of a father who has likewise been determined to be one-half or more Indian".

We advised the group that it has been determined administratively by the Commissioner's office that the services offered by the Bureau, at this time, were available only to the surviving 8 people out of the originally recognized 22 Indians, and their descendants who were one-half or more degree Indian blood; and that brothers and sisters of the 22 were not descendants.

B. Land

Mr. John Gordon advised the group that he had researched BIA land records, Department of Agriculture records, and land records in the Robeson County Court House to determne whether or not any land had been taken into trust by the Secretary of the Interior for Indians in Eastern North Carolina. He had also talked with a number of the Tuscarora representatives to see if they could provide any information on this subject. He stated that on the basis of his research there is no evidence that title to any property is or has been held in trust by the United States for any Indian group in Robeson County, North Carolina. A copy of Mr. Gordon's report is attached.

The group inquired as to the probability of the Federal Government purchasing land to establish a reservation. It was pointed out that while the Secretary has the authority to purchase land no funds have been appropriated in recent years except in a few cases for specifically mentioned tribes. The Secretary also has the authority to take land that may have been acquired through donation or purchase by the Indians themselves into trust status.

We were asked what the chances were of creating a reservation if the group acquired some land. We told

them that this decision would be made by the Secretary but that we would recommend that the land be taken into trust.

One of the attorneys said that they wanted the same benefits that other tribes received. It was again pointed out that they had individual rights only and that they had not obtained tribal status.

An explanation of the ways groups received tribal recognition ensued. We were questioned at length regarding recent Congressional action recognizing both Bridgeport and Tonto Apache. An admission was made by the group that they had to research and provide a definitive history of the Hatteras-Tuscaroras background as not all went to New York. It was explained that this was a local responsibility and that the BIA did not undertake such research, but would assist as might be possible.

The statement was made by one of the attorneys that they wanted to expand the 22 to include all the 41,000 Indians in eastern North Carolina through enrollment requirements. This was later retracted when it was admitted that many of the "1956 Indians" (Lumbees) would be excluded.

The group advised us that they were seeking the following benefits:

1. Federal Recognition as a tribe (Tribal Identity) - The Hatteras-Tuscarora Tribe.

2. Home Base - Reservation

3. Compensation (for Benefits missed in the past.)

4. Control of schools.

5. Tax Exemption.

6. Hunting and Fishing Rights.

7. Own Welfare and Government.

8. All the benefits they believed themselves to be entitled to as Indians.

   a) Schools

   b) Hospital

   c) Recreational Facilities

The land question was repeatedly raised throughout the 3-day meeting. One member of the group insisted that he had proof that land had been taken in trust by the Secretary of the Interior, however, he did not present it. The group was told that if anyone could present proof that land had been taken in trust it would help resolve the question. The attorneys were advised that if they could give us information on this subject that we would appreciate their help. The distinction between USDA and USDI (BIA) actions regarding land transactions was repeatedly explained.

It was apparent to everyone the first day that this group is fractionated. One group wanted to follow the procedure outlined in the 1935 Cohen memorandum (attached) and to petition the Secretary to take land into trust for their benefit. They proposed to have the 8 surviving members sign a petition to the Secretary to take 10 acres of donated land into trust. This would have provided them the basis for organization and an official tribal name.

The other group spoke of going to a court; to the Supreme Court; and or Congress to require the Federal Government to acquire a large tract of land for them on which schools and a hospital could be established. They were told this was a "long Long Shot."

The discussion between the two factions became quite loud and emotional at times. One group felt that the information we provided them was to their benefit and that we were being helpful (Maynor Faction).

The other group seemed to feel we were withholding information and that we were under orders from Washington to "fool them and get them to sign something away."

On the second day the two groups were each insisting they would go their seperate ways. One group was going to court and or Congress while the other group was going to petition the Secretary. However, the latter said they would also join in a law suit or appealing to Congress along with the other group.

There was a lengthy discussion concerning Section 5, Section 16, and Section 19 of the IRA and what was contained in these Sections. They felt that Section 16 did not apply to them and that only Section 19 mattered. Section 19 was read aloud and it was explained that Section 19 only defined who was considered to be an Indian under the Act.

The group that spoke of going to court said they wanted "recognition" before they would even talk about land. They want the BIA to give land to them or purchase land for them. This group is primarily concerned that they will be "cut out" and not eligible for Bureau services since very few might prove they are one-half or more degree Indian blood.

One attorney concluded that it is unlikely that Bureau services would be extended to all the 41,000 Indians in North Carolina and he did not want to raise false hopes among his clients. Another attorney told them that the falsest hope they had was to think they could get a bill through Congress to get recognition as an Indian tribe.

The Area Director brought out that the court decision directed the BIA to provide services to the 22 individuals who were determined to be one-half or more Indian blood; and that if he continued to delay providing these services he would be derelict in his duty. To meet the requirements of the court order he stated he was addressing himself to the 8 surviving eligible individuals and their eligible descendants. He again discussed the benefits available under the Act as well as benefits available under the seven new programs which were not available in 1935. He said that these services could be provided, to the extent funds were available, and did not have to wait on further court decision.

One of the attorneys asked how the Indians who are not eligible for services under the court decision could become eligible. It was again explained that the procedure had been outlined to them and that if the Secretary sees fit to establish a reservation and they organize under Section 16 of the IRA the enrollment criteria may expand the number of eligible persons. (See Cohen 1935 Memo).

One of the attorneys stated that this procedure would be "tough fight" but that it was the best alternative. He said that if the Secretary refused to expand the number of persons eligible for services they then had the choice of suing the Secretary or trying to get a bill through Congress.

Toward the end of the second day a representative of one group said he could see no point in sitting through another day of argument. He had his mind made up and as one of the original 22 he was going to petition the Secretary to take 10 acres of land, which he would donate to the tribe, into trust.

One of the attorneys recommended that each group could go their own way. One to petition the Secretary and other could go to court and or the Congress.

In talking with 5 of the living 8 of the original 22, we were advised that to their knowledge none of the 22 had married each other. We advised the group that at this time it appeared that only the 8 surviving members were eligible for services unless it could be shown that any of them had married a person of one-half or more Indian blood from another Federally recognized tribe.

Some of the group remarked that they could not understand why the examinations in 1935 had found or recognized only 22 Indians of one-half or more Indian blood because they feel there are more Indians in the area. They mentioned the need for additional examinations.

On Friday, many of the people appeared wearing Indian costumes and jewelry for the first time. Only one of the attorneys was present, Mr. Lawrence Maynor who had stated the day before that he was going to petition the Secretary was not present. However, his son was present.

The attorney asked what criteria for enrollment would be acceptable to the Secretary. It was explained that there was no set criteria; that groups set their own criteria subject to the approval of the Secretary that varied from the requirement of being a full blood to 1/4 or even a lesser degree. The concept of a base roll was explained.

The attorney stated that he feels that the Secretary's decision will be decided on the fact that more Indians cost more money. However, as far as he was concerned the most important thing was to get those who desire to be Tuscarora eligible for Bureau services. He wants the government to obtain land for them, either from military bases or whatever. He said that unless they can get this guarantee they will have to go to Congress.

The attorney said that since only 8 people appear to qualify for services Mr. Maynor had decided not to donate the 10 acres and would not petition the Secretary. He said that unless these people are made eligible for services they will end up with broken hearts and shattered dreams. He said it is time to back off and go to Washington and negotiate as to what is acceptable to the Secretary.

We advised him that the steps we had outlined were the only means available to us as part of the Executive Branch of Government. We told him that we felt the court decision was the best vehicle available to them at this time.

The attorney talked about the possibility of getting a Congressional committee to hold a hearing on the subject. He was advised that neither the Secretary nor the Commissioner would request such a hearing and that he or the Tuscarora would have to request it. Further, we touched on the Policy Review Commission and the possibility of the group contacting it. Much information was asked as to the White House's Indian staff, etc.

We were further advised, very emphatically, by the attorney that they would do nothing until they were assured that all were eligible for Bureau services - either all or none. At this time they did not know the names of everyone who wanted to become a Tuscarora, but they would find out. He said they would establish an enrollment list as well as a cut-off date and that when they came to Washington they would tell us what were their standards for enrollment, and see if it would be acceptable to the Secretary. He stated that the Bureau has to tell them what steps they must take to make everyone eligible for services.

In response to an inquiry from the attorney the Area Director said that when they came to Washington that they would undoubtedly meet with this same task force and if they would give us advance notice it would better assure our availability. Sentiment continued strong that a meeting with the Secretary was necessary before any progress could be made. We pointed out such a meeting was most unlikely at this time.

In conclusion the Area Director advised the group that we had outlined the alternatives available and they had told us their position; that the BIA was under a court order to provide services and, if requested by an eligible individual, these services would be provided because the question of land is entirely unrelated to the court order.

At the end of the meeting the people present thanked us and said they felt we had done everything we could for them. Hopefully, the discussions were of benefit in that we feel that much "education" took place. The group, certainly the attornies, with the exception of Tom Tureen, were by their own admission not as knowledgeable about Indian matters as they would have liked. It appears that a realization now exists among the group that no sudden influx of BIA programs will occur.

Harry A. Rainbolt

Harry A. Rainbolt
Area Director, Eastern Area
~~320~~ 703-235-2571

Attachments

C O P Y/

UNITED STATES
DEPARTMENT OF THE INTERIOR
Office of the Solicitor
Washington

April 8, 1935

Memorandum for the
Commissioner of Indian Affairs:

Your memorandum of February 18 raises the question, with re to the Siouan Indians of North Carloina, whether this group can organize under the Wheeler-Howard Act to receive a constitution a charter.

Clearly, this group is not a "recognized Indian tribe now u Pedoral jurisdiction", within the language of section 19 of the Wheeler-Howard Act. Neither are the members of this group reside of an Indian reservation (as of June 1, 1934). These Indians, th fore, like many other Eastern groups, can participate in the bene of the Wheeler-Howard Act only in so far as individual members ma be of one-half or more Indian blood. Such members may not only pa oipate in the educational benefits under section 11 of the Wheeler Howard Act and in the Indian preference rights for Indian Service employment granted by section 12 of the Wheeler-Howard Act, but ma also organize inder Section 16 and 17 of the Wheeler-Howard Act if the Secretary of the Interior sees fit to establish for these eligible Indians a reservation. Such a reservation might be estab lished either through the outright purchase of land by the Secreta of the Interior, under section 5 of the Wheeler-Howard Act, or by the relinquishment to the United States of land purchased by the Indians themselves, under the same section of the Wheeler-Howard Act, or by a combination of those two methods of acquisition. A reservation having been established, those residing thereon will be entitled to adopt a constitution and bylaws and to receive a charter of incorporation. Under section 19 of the Wheeler-Howard Act the "Indians residing on one reservation" may be recognized as a "tribe" for the purposes of the Wheeler-Howard Act regardless of their previous status.

In order to attain these benefits some such plan as the follo would, I think, be necessary: A group of landless Siouan Indians of one-half blood or more, recommended by the Siouan Council for their agricultural ability and industry, and approved by the Commiss of Indian Affairs, would purchase a suitable tract of land and

surrender title to the United States to be held in trust for th
group. The land would, of course, become tax-exempt. The mone
needed for such purchase might be contributed in part through th
generosity of several members of the Siouan Tribe and in part by
Indians who are to benefit from the project. The Indians choser
the project would then adopt a suitable constitution and bylaws
receive a charter. The group might be designated as the "Siouan
Community of Lumber River." It would then participate, along wi
Indian groups, in the benefits of the Tribal Credit Fund, establ
under section 10 of the Wheeler-Howard Act. In the case of thes
Indians the fund could be used to finance the purchase of seed a
agricultural machinery and the improvement of the land. Further
cooperative marketing, the establishment of a cooperative store,
possibly a cooperative dairy, might be financed by means of such
credits. Such activities would make the project useful, as well
educational, to the entire Siouan Tribe.

Such a project, begun on a fairly small scale, would natura
tend to expand in membership and area if the cooperative endeavo
undertaken should prove successful. Provision for the adoption o
new members and the acquisition of further lands should be inclu
in the constitution of the group.

In general, I think that some such plan as that above sketch
resting entirely on a voluntary basis and requiring no initial ou
lay by the United States, would prove suitable for many other non
reservation groups of Indians, and possibly for some reservation
that are "reservation" in name only.

(Signed) Felix S. Cohen.
Assistant Solicitor.